

ORDER NO. 2536

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Acting Chairman;
Tony Hammond, Vice Chairman;
Mark Acton;
Ruth Y. Goldway; and
Nanci E. Langley

Competitive Product Prices
Global Expedited Package Services 3 (MC2010-28)
Negotiated Service Agreement

Docket No. CP2015-77

ORDER APPROVING ADDITIONAL GLOBAL EXPEDITED PACKAGE SERVICES 3
NEGOTIATED SERVICE AGREEMENT

(Issued June 9, 2015)

I. INTRODUCTION

The Postal Service seeks to include an additional Global Expedited Package Services 3 (GEPS 3) agreement (Agreement) within the GEPS 3 product.¹ For the reasons discussed below, the Commission approves the Postal Service's request.

II. BACKGROUND

Agreements included within the GEPS 3 product offer price incentives to mailers that use Priority Mail Express International and Priority Mail International.

¹ Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, May 26, 2015 (Notice).

On May 26, 2015, in accordance with 39 C.F.R. § 3015.5, the Postal Service filed its Notice, along with supporting documents. In the Notice, the Postal Service asserts that the Agreement is functionally equivalent to the baseline agreement for the GEPS 3 product and requests that the Agreement be added to the existing GEPS 3 product. Notice at 3. Among the supporting documents, the Postal Service included a copy of the Governors' Decision authorizing the GEPS 3 product, the Agreement proposed to be added to the product, a certification of compliance with 39 U.S.C. § 3633(a), and financial workpapers. In addition, the Postal Service submitted an application for non-public treatment of materials requesting that unredacted portions of the Agreement, customer-identifying information, and related financial information remain under seal. Notice, Attachment 4.

The Agreement is intended to take effect June 15, 2015. Notice at 3. It is set to expire one year after its effective date. *Id.*

In Order No. 2511, the Commission provided public notice of the Postal Service's filing; established the instant docket for consideration of the filing's consistency with applicable statutory policies and Commission regulations; appointed a Public Representative; and provided an opportunity to comment.²

On June 1, 2015, the Chairman issued an information request to clarify the Postal Service's request to add the Agreement within the GEPS 3 product.³ The Postal Service responded to CHIR No. 1 on June 5, 2015.⁴ The Postal Service filed its response under seal and incorporated by reference its application for non-public treatment, filed with its Notice, for the protection of those materials. *Id.*

² Notice and Order Concerning Additional Global Expedited Package Services 3 Negotiated Service Agreement, May 27, 2015 (Order No. 2511).

³ Chairman's Information Request No. 1 and Notice of Filing Under Seal, June 1, 2015 (CHIR No. 1).

⁴ Response of the United States Postal Service to Chairman's Information Request No. 1, Filed Under Seal, June 5, 2015 (Response to CHIR No. 1).

III. COMMENTS

The Public Representative filed comments on June 3, 2015.⁵ No other comments were received.

Based upon a review of the Postal Service's filing, including the information filed under seal with the Commission, the Public Representative concludes that the Agreement should be added to the GEPS 3 product. *Id.* at 4. First, the Public Representative concludes that the Agreement is functionally equivalent to the baseline agreement. *Id.* The Public Representative notes that there may be a change in the cost characteristics associated with the Agreement compared to the baseline agreement. *Id.* at 3. He, however, ultimately concludes that because the market characteristics of the Agreement remain similar to the baseline agreement the Agreement remains functionally equivalent to the baseline agreement. *Id.* at 4. Second, the Public Representative concludes that the addition of the Agreement to the GEPS 3 product should allow the product to continue to comply with 39 U.S.C. § 3633(a)(2), and should not result in competitive products as a whole being subsidized by market dominant products, in accordance with 39 U.S.C. § 3633(a)(2). He notes that the Postal Service's financial model does not directly address whether the addition of the Agreement to the GEPS 3 product will result in the product as a whole covering costs as required by 39 U.S.C. § 3633(a)(2). *Id.* at 5. However, because the Postal Service's financial model indicates that the Agreement's negotiated rates will generate sufficient revenues to cover attributable costs, he reasons that that the addition of the Agreement to the GEPS 3 product should not cause the product's cost coverage to fall below 100 percent. *Id.*

⁵ Public Representative Comments on Postal Service Notice Concerning Additional Global Expedited Package Services 3 Negotiated Service Agreement, June 3, 2015 (PR Comments).

IV. COMMISSION ANALYSIS

The Commission's responsibilities in this case are to ensure that the Agreement: (1) is functionally equivalent to the baseline agreement established for the GEPS 3 product; and (2) satisfies the requirements of 39 U.S.C. § 3633 and applicable Commission rules (39 C.F.R. §§ 3015.5 and 3015.7).

Functional equivalence. In Order No. 503, the Commission approved the addition of GEPS 3 to the competitive product list and designated an agreement as the baseline agreement for assessing the functional equivalence of agreements proposed for inclusion within the GEPS 3 product.⁶

The Postal Service asserts that its filing demonstrates that the Agreement is functionally equivalent to the baseline agreement, and requests that the Agreement be included within the GEPS 3 product. Notice at 3. It asserts that the Agreement fits within the draft Mail Classification Schedule language for the GEPS 3 product. *Id.* at 2-3. The Postal Service also asserts that the Agreement and the baseline agreement possess similar cost and market characteristics and the same functional terms, but states that prices may differ. *Id.* at 3-4. The Postal Service identifies numerous differences between the Agreement and the baseline agreement, but asserts that these differences do not affect the fundamental service being offered or the fundamental structure of the Agreement.⁷

⁶ See Docket Nos. MC2010-28 and CP2010-71, Order Approving Global Expedited Package Services 3 Negotiated Service Agreement, July 29, 2010, at 7 (Order No. 503).

⁷ Differences include, among others, revisions to existing articles, the deletion of an article relating to service guarantees, and the renumbering of several articles. *Id.* at 4-6. The Agreement also revises and removes paragraphs in Article 14 related to Postage Updates. *Id.* at 6. In Docket No. CP2015-63, the Postal Service addressed concerns that the revisions to this Article may impact the agreement's ability to cover its costs by explaining that Article 12 allows the Postal Service to terminate the agreement with 30 days' notice and that the agreement's cost coverage falls within the range established in Governors' Decision 11-6. Docket No. CP2015-63, Response of the United States Postal Service to Chairman's Information Request No. 1, May 15, 2015, question 2. In light of this response, the Commission found the agreement in that proceeding should cover its attributable costs. See Docket No. CP2015-63, Order Approving Additional Global Expedited Package Services 3 Negotiated Service Agreement, May 19, 2015, at 5 (Order No. 2491).

The Commission has reviewed the Postal Service's reasons for asserting that the Agreement shares similar cost and market characteristics with the baseline agreement; meets the pricing formula and falls within the classification established in the Governors' Decision authorizing this product; and comports with 39 U.S.C. § 3633 and applicable Commission rules. It also has considered the Public Representative's comments. The Commission concludes that the Agreement is substantially similar to the baseline agreement and that the differences between them do not fundamentally alter either the service the Postal Service will provide under the Agreement or the structure of the Agreement. The Commission therefore finds that the Agreement may be included within the GEPS 3 product.

Cost considerations. The Commission reviews each competitive product to ensure that it covers its attributable costs, does not cause market dominant products to subsidize competitive products as a whole, and contributes to the Postal Service's institutional costs. 39 U.S.C. § 3633(a); 39 C.F.R. §§ 3015.5 and 3015.7. As long as the revenue generated by a product exceeds its attributable costs, the product is unlikely to reduce the contribution of competitive products as a whole or to adversely affect the ability of competitive products as a whole to contribute an appropriate share of institutional costs. In other words, a product that covers its attributable costs is likely to comply with 39 U.S.C. § 3633(a).

The Commission has reviewed the Postal Service's filing, including supporting financial analyses and the Response to CHIR No. 1 provided under seal, and the Public Representative's comments. Based on this review, the Commission finds that the Agreement should cover its attributable costs. The addition of the Agreement to the GEPS 3 product will likely not cause cost coverage for the product to fall below 100 percent because, as the Commission found in the FY 2014 Annual Compliance Determination (ACD), the product as a whole covers its attributable costs.⁸ Consequently, the Commission finds that the addition of the Agreement to the GEPS 3

⁸ Fiscal Year 2014 Annual Compliance Determination Report, March 27, 2015, at 71, 76-82.

product should allow the product to continue to comply with 39 U.S.C. § 3633(a)(2). Because it finds that the addition of the Agreement to the GEPS 3 product should allow the product to cover its attributable costs, the Commission finds that the addition of the Agreement to the product should not result in competitive products as a whole being subsidized by market dominant products, in accordance with 39 U.S.C. § 3633(a)(1). Similarly, it finds the addition of the Agreement to the GEPS 3 product is unlikely to prevent competitive products as a whole from contributing an appropriate share of institutional costs, consistent with 39 U.S.C. § 3633(a)(3). Accordingly, a preliminary review of the Agreement indicates it is consistent with section 3633(a). The Commission will review the Agreement's cost coverage, the cost coverage of the GEPS 3 product, and the contribution of competitive products as a whole to the Postal Service's institutional costs in the ACD to ensure that they continue to comply with 39 U.S.C. § 3633(a).

Other considerations. The intended effective date of the Agreement is June 15, 2015. Notice at 3. The Postal Service shall promptly notify the Commission should there be a change in the effective date of the Agreement. The contract is set to expire one year after the effective date. *Id.* If the Agreement is terminated prior to the scheduled expiration date, the Postal Service shall promptly file notice of such termination with the Commission in this docket.

V. ORDERING PARAGRAPHS

It is ordered:

1. The Agreement filed in Docket No. CP2015-77 is included within the Global Expedited Package Services 3 (MC2010-28) product. The revision to the Mail Classification Schedule appears below the signature of this Order and is effective immediately.
2. The Postal Service shall promptly notify the Commission should there be a change in the effective date of the Agreement.

3. The Postal Service shall promptly file notice of the Agreement's termination with the Commission in this docket if the Agreement is terminated prior to the scheduled expiration date.

By the Commission.

Ruth Ann Abrams
Acting Secretary

CHANGES TO THE MAIL CLASSIFICATION SCHEDULE

The following material represents a change to the Mail Classification Schedule. The Commission uses two main conventions when making changes to the Mail Classification Schedule. New text is underlined. Deleted text is struck through.

Part B—Competitive Products

2500 Negotiated Service Agreements

2510 Outbound International

2510.3 Global Expedited Package Services (GEPS) Contracts

2510.3.6 Products Included in Group (Agreements)

Each product is followed by a list of agreements included within that product.

- GEPS 3
Baseline Reference
Docket Nos. CP2010-71 and MC2010-28
PRC Order No. 503, July 29, 2010
Included Agreements

CP2015-77, expires June 15, 2016
